

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

601 NEW JERSEY AVENUE, NW

SUITE 9500

WASHINGTON, DC 20001

September 12, 2003

SECRETARY OF LABOR,	:	
MINE SAFETY AND HEALTH	:	Docket Nos. CENT 2002-80-M
ADMINISTRATION (MSHA)	:	CENT 2002-124-M
	:	CENT 2001-285-M
v.	:	CENT 2001-286-M
	:	CENT 2001-363-M
CACTUS CANYON QUARRIES	:	CENT 2001-364-M
OF TEXAS, INC.	:	CENT 2001-379-M

BEFORE: Duffy, Chairman; Beatty, Jordan, Suboleski, and Young, Commissioners

ORDER

BY THE COMMISSION:

This matter arises under the Federal Mine Safety and Health Act of 1977, 30 U.S.C. § 801 et seq. (1994) (“Mine Act”). Cactus Canyon Quarries of Texas, Inc. (“Cactus Canyon”) has filed with the Commission a document styled “Petition for Discretionary Review” challenging an unpublished order issued by Administrative Law Judge Irwin Schroeder denying its motion to certify for interlocutory review an earlier order by the judge. In his earlier order, Judge Schroeder denied Cactus Canyon’s motion to dismiss the instant proceeding on the basis of the Secretary of Labor’s delayed proposed penalties and late-filed petitions for assessment. *See* 25 FMSHRC 164, 169 (Mar. 2003) (ALJ). The Secretary filed an opposition to Cactus Canyon’s petition with the Commission.

Although Cactus Canyon has styled its document as a “Petition for Discretionary Review,” the petition meets the requirements for filing a petition for interlocutory review under Commission Rule 76(a)(1), 29 C.F.R. § 2700.76(a)(1), and we therefore construe the petition accordingly. *Southmountain Coal, Inc.*, 16 FMSHRC 28 (Jan. 1994) (construing a pleading styled as a petition for discretionary review as a petition for interlocutory review).

Upon consideration of the pleadings filed by Cactus Canyon and the Secretary, the Commission, in its discretion, denies review of Cactus Canyon's petition. *See* 29 C.F.R. § 2700.76(a).

Michael F. Duffy, Chairman

Robert H. Beatty, Jr., Commissioner

Mary Lu Jordan, Commissioner

Stanley C. Suboleski, Commissioner

Michael G. Young, Commissioner

Distribution

Andy Carson, Esq.
7232 Co. Rd. 120
Marble Falls, TX 78654

Jack Powasnik, Esq.
Office of the Solicitor
U.S. Department of Labor
1100 Wilson Blvd., 22nd Floor West
Arlington, VA 22209-2247

Administrative Law Judge Irwin Schroeder
Federal Mine Safety & Health Review Commission
Office of Administrative Law Judges
601 New Jersey Avenue, N.W., Suite 9500
Washington, D.C. 20001-2021